**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| A National Broadband Plan for Our Future | ) | GN Docket No. 09-51 |
| | ) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers | ) | WC Docket No. 07-135 |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| | ) | |
| Developing a Unified Intercarrier Compensation Regime | ) | CC Docket No. 01-92 |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Lifeline and Link-Up | ) | WC Docket No. 03-109 |
| | ) | |

# REPLY COMMENTS OF BANDWIDTH.COM, INC.

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May 23, 2011

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**REPLY COMMENTS OF BANDWIDTH.COM, INC.**

## I. INTRODUCTION AND SUMMARY

In its Notice of Proposed Rulemaking ("NPRM"), the Commission has set forth an ambitious, comprehensive, and well-reasoned plan to reform an outmoded intercarrier compensation ("ICC") system that is adding unnecessary costs and stifling innovation. Bandwidth.com looks forward to the implementation of the Commission's stated goals and to competing in a communications marketplace that is fundamentally fair but

streamlined to avoid unnecessary layers of regulatory complexity. ICC complexity and inefficiency are a by-product of rapid technological advancements that have outstripped an outdated regulatory rule-set. The opening comments confirm widespread agreement that the evolution toward Internet Protocol ("IP") services is inevitable and that the current ICC system is increasingly ill-suited to deal with the shift.

As the Commission recognizes in this NPRM and as the opening comments make clear, additional delay in addressing the failings of the current ICC system is no longer an option. Because the Commission has conducted a multitude of proceedings over the course of the past decade that have focused on the same set of fundamental questions, an exhaustive factual record already exists.[1] Further, over the course of a decade of intercarrier disputes and subsequent complaints, appeals, reconsiderations, and remands firm legal precedent is established.[2] So without further delay, the Commission must act to assert federal jurisdiction and implement ICC reforms that embrace free-market principles that shift carriers' focus away from regulatory-driven PSTN-based arbitrage schemes and back to where it belongs: on services and end-users.

Competition spurs innovation and investment that promote consumer benefits. We have borne witness to this open-market tenet through the explosion of the Internet and wireless services – each instances where the Commission has only acted in a limited manner and then only to assure open markets. The NPRM details a complex set of issues

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[1] *See* Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, *Connect America Fund; A National Broadband Plan for Our Future, et al.,* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, FCC 11-13,¶ 501, note 714-718 (rel. Feb. 9, 2011) ("NPRM") ("Although the Commission has sought comment on a variety of proposals over the last decade to comprehensively reform intercarrier compensation, such efforts stalled, leaving the current antiquated rules in place.")

[2] *See* NPRM Sec. XI.

that carriers and regulators regularly face under today's ICC regime,[3] and thereby highlights the risks associated with failing to act swiftly or acting in a piecemeal fashion. The Commission must stay true to the fundamental principles of the NPRM and move forward with clear holistic reform in order to achieve the ultimate goal of empowering broadband end-users as quickly and effectively as possible.[4]

The recommendations Bandwidth.com provides in these comments can be summarized as follows:

- Bandwidth.com supports the Commission's public policy goals aimed at advancing the consumer benefits of IP technology;
- In order to expediently realize its public policy goals, the Commission must assert jurisdiction over *all* communications traffic;
- In conjunction with exclusive ICC jurisdiction, the Commission must set clear definitions of "VoIP" and "IP-enabled" traffic;
- IP-enabled traffic should be declared to be "information service" traffic; and
- Commercially negotiated ICC contracts will be the most effective means to account for unique carrier-to-carrier considerations, as the recent landmark commercial deal between Bandwidth.com and the Verizon wireline companies for the exchange of VoIP traffic illustrates.

[3] NPRM ¶¶ 495-502

[4] NPRM ¶ 490 – "Specifically, the changes to the intercarrier compensation rules discussed below will: (1) modernize our rules to make affordable broadband available to all Americans and reduce waste and inefficiency by taking steps to curb arbitrage; (2) promote fiscal responsibility; (3) require accountability; (4) transition to market-driven and incentive-based policies. ("Four Principles").

## II. INTRODUCTION TO BANDWIDTH.COM

Founded in 1999, and based out of the Research Triangle Park in North Carolina, Bandwidth.com, Inc. ("Bandwidth.com") is a rapidly growing and innovative IP-based communications service provider. Bandwidth.com is a leading innovator in simplifying business communications through its suite of Phonebooth all-IP cloud-based solutions, which seamlessly integrate office VoIP systems, smartphones, and business-grade Internet connectivity for small and medium sized businesses. Further, through its iNetwork business unit, which operates a facilities-based entirely IP-optimized nationwide network, Bandwidth.com powers VoIP network services for "Voice 2.0" innovators throughout the United States. These innovators range from established, well-known national VoIP providers, to successful cutting edge start-ups that are experiencing rapid adoption of their products and services. Since Bandwidth.com entered the VoIP marketplace, it has experienced tremendous growth by powering fellow innovators. As a result, Bandwidth.com currently handles billions of voice minutes through its iNetwork, which is among the nation's fastest growing and most expansive communications networks.

Greatly enhancing its iNetwork, Bandwidth.com recently acquired and is integrating the Next Generation 9-1-1 ("NG 911") capabilities of dash Carrier Services ("dash"). The dash acquisition brings to the table a nationwide NG 911 footprint, and further integrates Bandwidth.com's partnership with industry IP innovators. The acquisition now puts at Bandwidth.com's disposal cutting edge patent-pending NG 911 emergency communications infrastructure and a network that supports multiple voice technologies on a single flexible platform enabled for the transition to a broadband

environment. The net result is that Bandwidth.com is now situated as an integrated provider of Tier-one IP-based emergency services and nationwide VoIP capabilities on its iNetwork.

Of very recent note, and relevant to this proceeding, is Bandwidth.com's signing of a landmark commercial deal with the Verizon wireline companies for the exchange of VoIP traffic. This pioneering VoIP traffic exchange agreement recognizes that the termination of VoIP traffic is an information service, whether traffic either originates and/or terminates in IP, and establishes a reciprocal rate of $.0007/MOU for the exchange and termination of VoIP traffic.[5] This agreement is not only a significant milestone for Bandwidth.com, but for the future of voice communications in the United States as it directly fuels VoIP innovation and adoption. The agreement enables the development of new product offerings – all to the direct benefit of the consumer and furthering the objectives of the Commission.

Bandwidth.com is thus uniquely positioned in the industry to be a catalyst for continued VoIP innovation and consumer demand. Thriving on communications innovation and powering the cutting-edge innovation of others, Bandwidth.com brings a distinct voice and perspective to this proceeding.

## III. POLICIES THAT EMBRACE IP TECHNOLOGY MUST DRIVE REFORM

Broad-based commitment to an IP future and the consumer benefits inured from such a commitment will occur more rapidly the sooner the Commission moves to implement its stated public policy goals. As the Commission states in the NPRM, "[b]y

[5] *See* http://bandwidth.com/about/read/verizonAgreement.html.

modernizing our policies for a broadband world and reducing the underlying incentives for wasteful arbitrage, we believe these reforms will promote investment in IP facilities and free up valuable resources, provide certainty and ultimately encourage new broadband investment and innovation."[6] It is axiomatic that a clear commitment from Commission to public policies that seek to enable a broadband IP future for America through real and holistic ICC reform will quicken the pace of investment and innovation across the industry.

While there has been unprecedented change in the communications industry in the last decade, Bandwidth.com believes the best years lie just ahead. As the Commission acknowledged in the National Broadband Plan that launched this NPRM:

> Due in large part to private investment and market-driven innovation, broadband in America has improved considerably in the last decade. More Americans are online at faster speeds than ever before. Yet there are still critical problems that slow the progress of availability, adoption and utilization of broadband.[7]

One of "the critical problems that has slow[ed] the progress of availability, adoption and utilization of broadband"[8] is an ICC system that fundamentally fails to account for IP technology. The ability to enable real-time two-way voice communications is but one of many applications that IP technology is capable of supporting. Superimposing the legacy voice-centric PSTN ICC onto IP-enabled services has deterred commercial investments that would otherwise advance a more rapid technological shift to a robust broadband marketplace. "The United States maintains the greatest tradition of

[6] NPRM ¶ 44.
[7] FCC, *Connecting America: The National Broadband Plan*, p. 3 (2010)("National Broadband Plan").
[8] *Id.*

innovation and entrepreneurship in the world"[9] and it is incumbent upon the Commission to lead the communications industry toward a future that enables that tradition. In order to do so, the Commission must set out a clear course to overcome the well-documented challenges that the current ICC system presents. "Foot-dragging" must be eliminated in order to realize the full potential of an IP broadband marketplace and ICC reform can accomplish a fundamental shift of resources that will spur the innovation that is still waiting to be tapped.[10]

## IV. ESTABLISHING EXCLUSIVE FEDERAL JURISDICTION AT THE OUTSET IS PARAMOUNT

Resolving the legal bases that determine the precise structure and degree of the Commission's jurisdictional authority is of paramount importance. In response to the Commission's request for comment regarding the preferred framework for working with states to implement reform, Bandwidth.com agrees with those commenters that suggest that granting states "shared" authority in the effort to ultimately unify ICC is more likely to advance arbitrage than realize the Commission's Four Principles.[11] Bandwidth.com believes there is ample legal precedent to allow the Commission to adopt its proposed "second approach" and "use the tools provided by sections 251 and 252 in the 1996 Act to unify all ICC rates, including those for intrastate calls, under the reciprocal

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[9] National Broadband Plan, at 4.
[10] *See* NPRM at ¶ 506 (including FN 729 citing Sprint Nextel Comments in re: NBP #25 at 7-10 (filed Dec. 22, 2009).
[11] Opening Comments and Reply Comments of Section XV of Time Warner Cable Inc., p. 5; Comments of Verizon and Verizon Wireless, pp. 21-23; Comments of Global Crossing North America, Inc., pp. 10-12.

compensation framework."[12] However, to be truly holistic in its approach, Bandwidth.com agrees with those commenters that suggest that the Commission should use additional authority beyond that contained solely in Sections 251 and 252 to reform ICC for *all* traffic.[13]

Historically, the ICC system made jurisdictional determinations by identifying and categorizing traffic exchanged between carriers based upon certain geographic assumptions. With accurate traffic identification, a well-understood set of ICC rules applies. However, IP traffic fundamentally undermines the geographic assumptions on which ICC has always depended and means that concurrence between carriers as to the proper classification of traffic and its corresponding rules is increasingly difficult to reach.[14] This reality is one aspect of the current environment that is being increasingly exploited to advance ICC arbitrage schemes, which have nothing to do with providing innovative services to end-users.[15]

To stem arbitrage schemes and advance the goals of broadband deployment, the Commission must firmly assert jurisdiction over *all* communications traffic. Sharing jurisdiction with the states will only serve to prolong the pain that exists in the current system. After years of disputes and litigation, the opening comments suggest a high degree of consensus among key industry members on the fundamental question of jurisdiction and the Commission's tentative conclusions that it has "authority to regulate

[12] NPRM ¶ 491

[13] *See* Comments of Verizon and Verizon Wireless at p. 23 (discussing "*third* option, which is superior to either of the two alternatives proposed in the NPRM."); *See also* Comments of Sprint Nextel Corporation, Appendix A; Comments of Global Crossing North America, Inc., pp. 10-12; Comments of MetroPCS Communications, Inc., pp. 11-12.

[14] *See* Comments of AT&T at pp. 46-47; Comments Global Crossing North American, Inc., pp. 6-7; Comments of MetroPCS Communications, Inc., pp. 13-14.

[15] *See* Comments of Verizon and Verizon Wireless at p. 39.

reciprocal compensation arrangements involving intrastate as well as interstate traffic."[16] For example, Sprint's comments include a thorough analysis of the legal support for the assertion of federal jurisdiction over *all* traffic for ICC purposes.[17] Other carriers' comments also contain a similar recitation of the precedent that establishes the jurisdictional bounds of the Commission in the context of the Act.[18] Sections 251(b)(5), 201 and 332 of the Act give the Commission all the authority it needs to act swiftly to implement a rational and uniform system. The comments from carriers such as Sprint, Time Warner Cable, AT&T, Comcast, Verizon, and others provide compelling evidence that the jurisprudence has developed to the point where little room for debate remains concerning the statutory bounds of the Commission's authority to regulate *all* forms of ICC including intrastate access.

As the Commission and other commenters have noted, some of the most relevant and compelling precedent concerning the Commission's jurisdiction in the wireline ICC context comes out of the long-standing industry disputes over the proper compensation for dial-up Internet services ("ISP-bound traffic"). With the *Core Forbearance Order*, the Commission has resolved the inter-play between Sections 251(g) and 251(b)(5). [19] Embracing the legal rationale of the Commission's precedent in the ISP-bound ICC

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[16] NPRM ¶ 515

[17] Comments of Sprint Nextel Corporation – Appendix A.

[18] *See e.g.: Id.;* Comments of Time Warner Cable Inc. at pp. 3-5; Comments of AT&T, I.C.1.2.3., pp. 37-48; Comments of Comcast Corporation, II.B.1., pp.6-8; Comments of Verizon and Verizon Wireless, II.D.1.,pp. 23-46.

[19] *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Application of the ISP Remand Order*, 19 FCC Rcd 20179, (2004), *aff'd*, *In re Core Communications, Inc.*, 455 F.3d 267 (D.C. Cir. 2006) ("*Core Forbearance Order*"); *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, Memorandum Report and Order, WC Docket No. 06-100, 22 FCC Rcd 14118 (2007); *Core Communications v. FCC*, 592 F.3d 139 (D.C. Cir. 2010), *cert. denied*, 131 S. Ct. 597 (Nov. 15, 2010).

context in this NPRM's holistic reform effort will shift resources away from litigious behavior and toward investment and innovation to the benefit of consumers.[20]

As Verizon succinctly observes in its opening comments, granting states authority to participate in fundamental components of ICC reform is likely to have the effect of continuing ICC complexity that should instead be streamlined.[21] Vast amounts of commentary and supporting data concerning the varied kinds of ICC disputes that have unfolded during the transition to an IP-based network market-place to date already exist.[22] Over the course of the past decade of ICC-related advocacy the term "arbitrage" has become cliché as all sides try to label a wide-variety of traffic exchange and ICC scenarios to their particular benefit. And as often as not, the "arbitrage" that is at the core of the disputes is targeted squarely at the lack of clarity as to where legal jurisdiction is proper.

Because IP-enabled traffic has been deemed to be inherently interstate in nature,[23] while at the same time "the Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules,"[24] state commissions have been put in the unenviable position of being asked to referee "arbitrage" claims time and again. Not surprisingly, state specific litigation has led to a confusing patchwork of regulatory rules across the country, which often serves to advance the "arbitrage" further. As states are

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[20] *See* Comments of AT&T at p. 39, citing to *ISP Remand Order* and D.C. Circuit Court review.

[21] Opening Comments of Verizon and Verizon Wireless, pp. 21-23; *See also*, Opening Comments and Reply Comments of Section XV of Time Warner Cable Inc., at p. 5; Comments of Global Crossing North America, Inc., at pp. 10-12.

[22] NPRM ¶¶ 495-502

[23] Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, 19 FCC Rcd 22404, (2004) ("*Vonage Order"*), *aff'd Minn. Pub. Utils. Comm'n v. FCC*, 483 F3d 570 (8th Cir. 2007).

[24] NPRM ¶ 604

asked to resolve disputes that arise because of disparities between intrastate and interstate access rates, they must first confront the question of where jurisdiction is proper. [25] The legal jurisprudence that has evolved in the context of a decade of discrete carrier-to-carrier disputes and larger rulemaking proceedings has crystallized the exclusive authority that rests with the Commission under the Act and compels the Commission to act.[26]

## V. CLARIFYING THE ICC TREATMENT OF IP-ENABLED SERVICES WILL SWIFTLY ENABLE A TRANSITION TO UNIFORMITY

Once the proper jurisdictional framework is established, the Commission should move swiftly toward ICC uniformity within a lightly regulated structure. As noted in the NPRM, Bandwidth.com recently entered into a ground-breaking commercially negotiated VoIP traffic exchange agreement with Verizon.[27] This landmark agreement represents the promise of a swift transition to IP and a rational ICC system. As a component of its overall ICC reform framework, the Commission should endorse commercial agreements such as this as a way to wean the industry from regulatory-driven arbitrage schemes.

In order to advance the goals of accountability, avoidance of waste and arbitrage the Commission must first set clear definitions of services or in the alternative implement uniform treatment across all services.[28] Given the multiplicity of established and

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[25] *See In re: Sprint Communications Company L.P., v. Iowa Telecommunications Services, Inc*., Dckt. No. FCU-2010-0001, Order, (Iowa Utils. Bd.) (Feb. 4, 2011)("*Iowa VoIP Access Order*").
[26] *See* NPRM at ¶ 512 ("We also believe that the Commission could apply section 251(b)(5) to all telecommunications traffic exchanged with LECs, including intrastate and interstate access traffic.")
[27] NPRM n. 929.
[28] NPRM ¶ 490.

emerging "VoIP" services, the term is necessarily amorphous and inherently challenging to define. Hence, in the ICC context IP traffic is a large and growing source of dispute among carriers. As part of the inevitable shift to an IP environment, the Commission must clarify its intent concerning the treatment of "VoIP". If fundamental disagreements about whether traffic is or is not "VoIP" continue, little will have been resolved in this reform attempt.[29]

One example of the risk in continuing to try to apply ICC rules that theoretically depend up "physical presence" is the considerable and growing debate as to whether "fixed VoIP" and "nomadic VoIP" are relevant to ICC.[30] This is a debate that should be cut off quickly and decisively. IP-enabled traffic should be declared to be "information service" traffic and any further sub-definition should be deemed irrelevant for the purposes of ICC.[31] The criticality of asserting federal jurisdiction for *all* traffic is at the fore of this one discrete issue in the NPRM. Allowing disputes that are rooted in the outdated and increasingly irrelevant concept of "physical presence" to fester will result in de facto "shared jurisdiction" with state regulators who are called upon to resolve claims of "arbitrage."[32] The term "fixed VoIP" is a harbinger for delayed broadband investment and innovation. Attempting to or allowing carriers or states to carve IP traffic up into sub-categories such as these is counterproductive and will harm reform.[33] In asserting exclusive federal jurisdiction the Commission must also be certain to avoid

[29] Comments of AT&T at p. 29; Comments of Verizon and Verizon Wireless at pp. 13-14; Comments of Cox Communications, Inc. at 13-14.
[30] NPRM at ¶612.
[31] *See* Comments of Vonage Holding Corp., II.B., pp. 3-5; Comments of the Information Technology Industry Council Comments at 1-4; Comments of the Telecommunications Industry Association, at pp. 15-16; *See also National Cable & Telecomms. Ass'n v. Brand X Internet Svcs*., 545 U.S. 967 (2005).
[32] *See Iowa VoIP Access Order.*
[33] Comments of Verizon and Verizon Wireless, II. D.1.ii.b., pp. at 29-34.

unintentionally re-introducing state regulatory authority by directly or indirectly validating any classifications of IP traffic that are based upon "physical presence" considerations.

The persistent debate concerning *dial-up* ISP-bound traffic, provides valuable insight into why the concept of "physical presence" is toxic in an IP environment and should be avoided in the transition to a uniform ICC regime. The experience with ISP-bound ICC has demonstrated that the assertion of federal jurisdiction *for ICC rate-setting purposes alone* was not sufficient to stem litigation over ISP-bound ICC.[34] Because the Commission did not forcefully embrace its jurisdictional grant of authority under Section 251(b)(5) to set rates for *all* ISP-bound traffic, rather than finally resolving disputes over ISP-bound ICC, the litigation simply morphed into a debate about so-called "Virtual NXX" or "VNXX" and continued.[35] The experience with "Virtual NXX" in the ISP-bound ICC arena demonstrated that a "local presence" test is both stifling and ultimately unmanageable. IP technology does not need it and pure regulatory purposes are not a valid reason to superimpose a "physical presence" test on the technology.[36]

To provide clear guidance, the Commission should also explicitly declare that traffic that includes a "net-protocol conversion" and "enhanced" IP functionality is squarely within the Commission's jurisdiction and part of the Commission's new

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[34] *See* Comments of Level 3 Communications LLC on Intercarrier Compensation and Universal Service Reform, pp. 15-16, citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, CC Docket No. 96-98, 16 FCC Rcd. 9151, 9165 ¶31 (2001) ("*ISP Remand Order*").
[35] *See* NPRM ¶684 n. 1100.
[36] *See* Comments of AT&T, p. 44, citing *Vonage Order*; Comments of the Telecommunications Industry Association, p. 14; Comments of Verizon and Verizon Wireless, pp. 29-31.

framework that properly accounts for IP technology.[37] Without such guidance, providers will continue to disagree about the relevant labels or categories to apply to VoIP traffic and then further, what rules control. Within the sub-set of "VoIP" traffic are many additional sub-classifications that have real consequence in the present mixed-up ICC world. Whether traffic is considered to be "interconnected VoIP", "IP-in-the-middle", "IP originated", "IP terminated", "wholesale VoIP", "fixed VoIP," "nomadic VoIP", and now "wireless VoIP"[38] can yield a wide variety of possible outcomes for ICC compensation. The mere existence of these distinct labels affect how carriers operate, including decisions to engage in "arbitrage." Clarity begins with a definitive assertion of federal jurisdiction over *all* traffic, but asserting jurisdiction by itself is unlikely to resolve the myriad ICC issues that carriers deal with. The comments filed in response to Section XV of the NPRM demonstrate that there is risk of furthering the confusion rather than initiating a path toward clarity by trying to take on discrete issues rather than holistic reform.[39] For example, "Phantom Traffic" cannot be defined or resolved without considering the inherent technical characteristics of "VoIP."[40] And so-called "VoIP arbitrage" is unlikely to be resolved in the near term while it continues to be fundamentally unclear what "VoIP" is or how it can effectively be distinguished from "non-VoIP." Too often we find ourselves engaged in the discrete issues and become mired in the same old disputes about the ICC categories that rely upon geographic

[37] Verizon and Verizon Wireless Section XV Reply Comments, pp. 18-19; Comments of Vonage Holdings Corp., pp. 2-5; Comments of Google, Inc.,pp. 3-5.
[38] Comments of Verizon and Verizon Wireless, p. 28, 31.
[39] Opening Comments and Reply Comments on Section XV of Time Warner Cable Inc., pp. 5-7; Reply Comments of PAETEC Holding Corp., Mpower Communications Corp., and U.S. TelePacific Corp., pp. 19-20.
[40] *See e.g.* Section XV Comments of Cablevision Systems Corporation and Charter Communications, p. 15; Section XV Comments of Google, Inc., p. 3; Section XV Comments of Level 3 Communications, LLC; pp.10-11.

assumptions. Because there is such broad consensus on the fundamental principles of reform across the industry, the Commission is now well positioned to take a holistic approach and guide an orderly transition to a broadband world to the benefit of consumers. The sooner the Commission asserts exclusive jurisdiction, endorses the inherent technological superiority of IP and sets forth its reform framework toward a unified ICC rate structure, the sooner the industry can adjust their business models accordingly.[41]

## VI. COMMERCIAL AGREEMENTS WITHIN A "LIGHT TOUCH" FEDERAL FRAMEWORK WILL SHIFT INDUSTRY RESOURCES TOWARD INNOVATION

Providers of communications services are adept at crafting and negotiating service agreements that contain mutually beneficial terms and conditions with other providers of communications services. Free-market contracting will also work in the communications interconnection context if given the chance – particularly in an environment that has been rid of regulatory "arbitrage" opportunities. Through commercial negotiations parties will come to terms on the myriad of interrelated ICC issues in a mutually beneficial manner. Much as it is in the context of service contracting, over time, model agreements that contain terms and conditions that represent providers' key business and legal positions will emerge. A Commission established "glide-path" or "framework" for guiding initial reform attempts can mature into a

[41] NPRM ¶ 554 – "Alternatively, should the Commission propose a default glide path for reductions,…, but leave carriers free to negotiate alternate arrangements?" Answer: Yes.

backstop for appropriate minimal regulatory redress in an all-IP future. A part of the transitional framework and ultimate backstop should be a Commission established dispute resolution forum for those instances where parties cannot reach agreement on fundamental ICC matters.

Bandwidth.com believes that the framework the Commission establishes should be based more upon the experience of the wireless and Internet marketplaces than the PSTN model. While "cost-based" rate setting may be an ideal solution in theory, its practicality is questionable. Ultimately, a framework based upon determinations of costs to set ICC rates would prevent effectuating the Commission's Four Principles. After a decade of dispute and debate, the Commission must discourage any further "foot-dragging" and spur investment by facilitating a swift transition to IP.[42] Bandwidth.com believes that commercially negotiated ICC contracts will be the most effective means to account for unique carrier-to-carrier considerations. Commercial contracts also promise to more accurately approximate true cost than any regulatory regime could ever achieve. Finally, improved pricing and service innovations will flow more directly to consumers in a streamlined framework such as this.

Bandwidth.com agrees with the Commission and those commenters that support a fast-paced transitional framework to a unified rate to mandate industry change. Interim transitional rules will inevitably serve as the principles that ultimately establish the backstop/default framework for carriers to more efficiently conduct business in the

[42] *See* NPRM at n.729.

future.[43] This sort of structure would also allow for a period where the Commission could monitor market effects and act as needed to address significant problems that may not have been foreseen. Thus, by the end of a transition period there will be a track record to guide future decisions or revisions that may prove necessary.[44] Maintaining federal jurisdiction subsequent to an orderly transition to a reformed ICC framework will ensure a requisite "backstop" exists, should market forces require that regulatory intervention is necessary at some future point in time.[45] The PSTN will not disappear overnight and therefore we cannot expect the regulatory structure that is based around the PSTN to disappear in its entirety either. However, an aggressive federally mandated glide-path supported by well-established reliable data will buttress a commercially driven shift toward an all-IP world that empowers American innovation and investment.

## VII. CONCLUSION

A decade-long record clearly demonstrates the need for swift Commission action. As an innovative competitive IP provider, Bandwidth.com is encouraged by the prospect of soon being able to operate in a communications marketplace devoid of protracted ICC disputes and litigation. Therefore, Bandwidth.com encourages the Commission to follow through and assert its jurisdiction under the Act to implement holistic ICC reforms that embrace IP technology and free-market principles for *all* traffic. With bold action, the Commission can succeed in shifting carriers' focus away from business models that are

[43] Comments of AT&T, pp. 24-25; Comments of Cox Communications, Inc., pp. 13-14; Comments of Comcast Corporation, pp. 4-5; Comments of MetroPCS Communications, Inc., pp. 17-18.
[44] *See* Comments of AT&T at p. 25 (Recommending "ex post" targeted regulatory measures rather than "ex ante" proscriptive rules.).
[45] *See e.g.* Comments of Time Warner Cable, p.12-13; Comments of Verizon and Verizon Wireless, p. 36-39; Comments of MetroPCS Communications, Inc., pp. 17-18.

dependant upon regulatory-driven PSTN-based revenue streams and back to where it belongs: on services and end-users.

Innovation and investment that promote consumer benefits must be the Commission's focus. Today's ICC universe is an intricate set of interrelated but outdated rules that carriers and regulators consistently struggle to manage. Reducing litigation by eliminating arbitrage opportunities will shift capital to more beneficial purposes and spur broadband growth. As the Commission moves ahead with holistic reform, it must stay true to the Four Principles of the NPRM to realize the benefits of a broadband future as quickly and effectively as possible.

Respectfully submitted,

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May 23, 2011